Office-Supreme Court, U.S.
FILED
AUG 17 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 219

WILLIE JACKSON, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONER'S BRIEF IN RESPONSE TO THE BRIEF OF THE UNITED STATES IN OPPOSITION

HOWARD MOORE, JR.
859½ Hunter Street, N.W.
Atlanta, Georgia 30314

JOHN H. RUFFIN, JR.
930 Gwinnett Street
Augusta, Georgia

Attorneys for Petitioner

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 219

WILLIE JACKSON, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

PETITIONER'S BRIEF IN RESPONSE TO THE BRIEF OF THE UNITED STATES IN OPPOSITION

Pursuant to paragraph 4 of Rule 24 of the Rules of this Court, the petitioner files this brief in response to the brief of the United States in opposition to the petition for the writ of certiorari.

STATEMENT

The Government relies heavily upon an inaccurate statement of the facts. It is not clear that petitioner's license was suspended on June 5, 1963 in the recorder's court (Br. 3). A material conflict exists with respect to this issue. Other evidence introduced by the Government shows that the license was suspended on May 31, 1963 (R. 92), and the Government did not avail itself of the opportunity to prove that petitioner's license was actually suspended on the date of his arrest (R. 119). Nor is it true that petitioner "dropped a cardboard case of whiskey in fruit jars out of the right door" and that the officers could smell whiskey emanating from the broken jars (Br. 4). That statement is a mere conclusionary taint placed upon ambiguous testimony. Officer Roland asserted that he could "tell the door opened" and "This case went rolling down the street and glass was breaking and liquid was running in the street" (R. 44). The officers did not stop to examine the liquid substance or to determine whether or not revenue stamps had been affixed to the broken jars (R. 45).

ARGUMENT

1. The Government erroneously urges that the officers had "ample probable cause" for petitioner's arrest (Br. 5). That argument is based upon (a) information from a reliable informant that petitioner transported illegal whiskey and (b) alleged ejection of a case of fruit jars containing illegal whiskey from the car during the chase. First, even if the detectives did in fact rely upon an unidentified informant who was not present at the trial and available for cross-

examination,[1] the information which he allegedly gave could hardly have been reliable, for the same officers over a six-month period had repeatedly stopped and searched petitioner's cars with no results whatsoever (R. 22, 87-93, 103, 110, 112). The revelations of a warrantless search cannot prove the reliability of a nameless informant. Compare *United States* v. *Di Re*, 332 U.S. 581, 595 (1947). Second, on the occasion in question, there is absolutely no evidence that the officers received any information from their informant, reliable or otherwise. The incident occurred at seven o'clock in the morning (R. 22). Third, the claim that probable cause was furnished by one of the officers smelling whiskey from a carton allegedly ejected from the right side of petitioner's two-door sedan, while they were travelling at speeds of seventy (70) miles per hour in a car filled with cigar smoke strains credibility far beyond the breaking point (R. 41, 46). Significantly, none of the jar lids which the officers claimed were shattered upon their ejectment, thus releasing the incriminating scent, were offered in evidence.

The necessity for the existence of probable cause for an arrest to precede the warrantless search of a motor vehicle cannot be avoided by casually characterizing the seized objects as contraband (Br. 4, 5). In all cases where warrantless search has been validated, probable cause for an arrest existed prior to the search.

---

[1] When hearsay evidence is an indispensable component to support a finding of probable cause, the Government should, at least, be required to disclose the informant's name. For, without an opportunity to go behind the officer's testimony, fair adversary litigation of what the officer knew when he acted is impossible. See *Roviaro* v. *United States*, 353 U.S. 53, 61 (1957).

Brinegar v. *United States*, 338 U.S. 160 (1949); *Scher* v. *United States*, 305 U.S. 251 (1938); *Carroll* v. *United States*, 267 U.S. 132 (1925). "An arrest is not justified by what the subsequent search discloses." *Henry* v. *United States*, 361 U.S. 98, 103 (1959). More critically, whiskey is not contraband *per se*. It only becomes contraband if the taxes are not paid. There was absolutely no evidence that the officers knew prior to the search and seizure that the containers inside the closed carton in the rear of the car did not have the requisite revenue stamps affixed.[2]

Appellation of the petitioner as "the head of an illegal whiskey operation" (Br. 3) in no way justifies his treatment. Giving petitioner this status has been used to justify repeated and capricious pursuits, arrests, and searches of him and his property over a six-month period. The deprivation of precious constitutional liberties cannot be sustained on the basis of status alone.[3]

The Government's parenthetical contentions (a) that the arresting officers were not required to ascertain whether petitioner's license had been reinstated and (b) that the Georgia legislature has not manifested an intent that the violation of Section 1707, 68 Ga. Code Ann., should render inadmissible evidence offered in a federal prosecution are specious and immaterial. First, a fact, though collateral, is not proved by circumstantial evidence unless the proven facts point

---

[2] "Georgia Moonshine" may be purchased in fruit jars over the counter in most retail package stores.

[3] See *Robinson* v. *State of California*, 370 U.S. 660 (1961), condemning punishment of the basis of medical status. *Griffin* v. *Illinois*, 351 U.S. 12 (1955), condemning inequality of treatment on the basis of economic status.

with equal consistency to the hypothesis claimed to the exclusion of all other reasonable hypotheses. Here, the proven facts do not render it more probable than not that petitioner was driving, on the day in question, while his license was in suspension. State law operates to defeat establishment of the critical hypothesis without additional proof. Section 422 (a), 92-A Ga. Code Ann., defines suspension as the *temporary* withdrawal of the privilege of operating a motor vehicle. Reinstatement proceedings and orders are not matters of public record, and there are two methods of reinstating a suspended license, Sections 422, 423, 427.1, 92-A Ga. Code Ann. The arresting officers never even inquired whether petitioner had a license or not, evincing a purpose not to arrest but to search (R. 107, 113, 122). Second, the Government attempts to import (or perhaps, "bootleg") into the area of federal criminal prosecutions inappropriate notions of equitable absention. Vindication of a federal right does not have to await its dis-entanglement from a skein of state law in which it is but incidentally entwined: *McNeese* v. *Board of Ed.*, 373 U.S. 668, 674 (1962). Not only is abstention federally inappropriate, but it is unconscionable, also. No state remedy is even arguably[4] available to adjudicate the issue of whether an arrest in violation of the statute is valid and the two-year state statute of limitations (Section, 601, 27 Ga. Code Ann.) bars even a bad faith prosecution in the state courts (R. 108, 117, 119).

---

[4] Section 1707, 68 Ga. Code Ann., has been before the Georgia Appellate courts once. In *Poole* v. *City of Louisville*, 107 Ga. App. 305, 130 S.E. 2d 157, 160 (1963), a civil suit for personal injuries, it was held that the issue of whether pursuit in an unmarked car of a motorist was wanton or not was for the jury.

2. Certiorari should be granted for the further reason that the decision below works an injustice between litigants. Consider *Mondeck* v. *Pan American World Airways, Inc.*, 382 U.S. 25 (1965). The decision below conflicts in principle with other contrary decisions of the Fifth Circuit on facts which are materially analogous.[5] In both *Collins* v. *United States*, 289 F. 2d 129 (1961), and *Rent* v. *United States*, 209 F. 2d 893, 899 (1954), searches and seizures of evidence from immobilized motor vehicles were invalidated on the theory that necessity no longer justified the omission to obtain a search warrant.

CONCLUSION

For the foregoing reasons the petition for the writ of certiorari should be granted.

Respectfully submitted,

HOWARD MOORE, JR.
859½ Hunter Street, N.W.
Atlanta, Georgia 30314

JOHN H. RUFFIN, JR.
930 Gwinnett Street
Augusta, Georgia

Attorneys for Petitioner

---

[5] Evidently the panel which decided this case, in a brief *per curiam* opinion, was conscious of this conflict. The motion for rehearing was held under advisement for five and one-half months before it was overruled, without comment, on May 11, 1966.